

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

MICHAEL MUNIE and	)	
ABC QUALITY MOVING, L.L.C.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:10-CV-01096-DDN
	)	
CHRIS KOSTER, JAN SKOUBY,	)	
MICHELLE TEEL, TINA THURMAN,	)	
CHUCK GOHRING, RUDOLPH E. FARBER,	)	
DAVID A. GACH, DUANE S. MICHIE,	)	
GRACE NICHOLS, LLOYD J. CARMICHAEL,	)	
and STEPHEN R. MILLER,	)	
	)	
Defendants.	)	

DEFENDANTS SKOUBY, TEEL, THURMAN, GOHRING, FARBER  
GACH, MICHIE<sup>1</sup>, NICHOLS, CARMICHAEL AND MILLER'S MOTION TO DISMISS

COMES NOW Defendants Skouby, Teel, Thurman, Gohring, Farber, Gach, Nichols, Carmichael, Miller and Suelthaus, pursuant to Fed. R. C. P. 12(b) (6), through their undersigned attorneys of record, and move this Court for an ORDER dismissing the case at bar. In support of this motion, Defendants state as follows:

1. Plaintiffs' First Claim For Declaratory relief alleges deprivation of liberty without due process of law. Plaintiffs' First Claim For Declaratory Relief does not allege they have been "completely deprived of the right to engage in their chosen profession. As a result, Plaintiffs First Claim For Declaratory Relief fails to state a claim upon which relief can be granted and should be dismissed.

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<sup>1</sup> Defendant Michie previously filed a Motion To Substitute Party pursuant to Fed. R. C. P. 25 substituting Mr. Suelthaus as a party for Defendant Michie because Mr. Suelthaus was appointed to replace Defendant Michie on the Missouri Highways and Transportation Commission on July 15<sup>th</sup>, 2010.

2. Plaintiffs' Second Claim For Declaratory Relief purports to arise from the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Plaintiffs do not allege a substantive right in their Complaint. Defendants a rational basis for the procedures challenged by Plaintiffs is to protect consumers. Plaintiffs allege no facts tending to overcome the presumption of legislative validity. Plaintiffs' Second Claim For Declaratory Relief should be dismissed.

3. Plaintiffs' Third Claim For Declaratory Relief purports to sound from an arbitrary and irrational classification of household movers. Defendants' articulated reason for such classification is consumer protection. Plaintiffs allege no facts to overcome the presumption of legislative validity and should be dismissed.

4. Plaintiffs' Fourth Claim For Declaratory and Injunctive Relief alleges Defendants have unlimited discretion to interpret "public convenience and necessity." Defendants made no decision adverse to Plaintiffs' application. Plaintiffs' were not aggrieved by Defendants' decision. As a result, Plaintiffs do not have standing to challenge Defendants' decision and this claim should be dismissed.

5. Plaintiffs' Fifth Claim For Declaratory and Injunctive Relief alleges an abridgement of privileges and immunities. Plaintiff Munie does not allege he was deprived of rights because he is a citizen of a different state. Since Plaintiff Munie alleges he is a resident of Missouri and does not allege he is being treated differently than a resident of another state conducting business within this state's geographic limitations, the Privileges and Immunities Clause of the Fourteenth Amendment is inapplicable to the case at bar and the Fifth Claim for relief should be dismissed.

6. Plaintiffs' Complaint against Defendants Skouby, Teel Thurman and Gorhing should be dismissed for a reason independent of the reasons propounded by all Defendants. Mo. Rev. Stat. § 226.130(2) requires Defendants Farber, Gach, Nichols, Carmichael, Miller and Michie to prescribe rules fixing the duties of all persons these Defendants employ in their capacity as members of the Missouri Highways and Transportation Commission. Any injunctive relief directed to Defendants Farber, Gach, Nichols, Carmichael, Miller and Michie would be binding on Defendants Skouby, Teel Thurman and Gorhing are not real parties in interest or necessary defendants in the case at bar and should be dismissed.

Respectfully Submitted,

/s/ R. B. Regan

R. B. Regan E.D. A.R.N. #10587

Sr. Litigation Counsel

Alicia C. O'Connell E.D. A.R.N. #4296591

Assistant Counsel

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

1590 Woodlake Drive

Chesterfield, Missouri 63017

Phone: 314.453.1856

Fax: 314.340.4229

Email: [b.regan@modot.mo.gov](mailto:b.regan@modot.mo.gov)

Paula Lambrecht E.D. A.R.N. #21657

Chief Counsel

*ATTORNEYS FOR DEFENDANTS*

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2010, the foregoing *Defendants Skouby, Teel, Thurman, Gohring, Farber, Gach, Michie, Nichols, Carmichael and Miller's Motion to Dismiss* was filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Daniel A. Himebaugh  
Pacific Legal Foundation  
3900 Lennane Drive, Suite 200  
Sacramento, California 95834

M. Reed Hopper  
Pacific Legal Foundation  
3900 Lennane Drive, Suite 200  
Sacramento, California 95834

Timothy Sandefur  
Pacific Legal Foundation  
3900 Lennane Drive, Suite 200  
Sacramento, California 95834

I hereby certify that on September 23, 2010, the foregoing was mailed by United States Postal Service to the following non-participant in Electronic Case Filing:

Daniel A. Himebaugh  
Pacific Legal Foundation  
3900 Lennane Drive, Suite 200  
Sacramento, California 95834

M. Reed Hopper  
Pacific Legal Foundation  
3900 Lennane Drive, Suite 200  
Sacramento, California 95834

Timothy Sandefur  
Pacific Legal Foundation  
3900 Lennane Drive, Suite 200  
Sacramento, California 95834

Chris Koster  
Supreme Court Building  
207 West High Street

P.O. Box 899  
Jefferson City, Missouri 63102

/s/ R. B. Regan

R. B. Regan